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## REGULATION 9

## EVICTION REGULATION

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## 1. Notice Terminating Tenancy Required

No Application for Certificate of Eviction shall be filed with the Rent Equity Board (Board) unless a legally sufficient notice terminating tenancy has been sent or served on the tenant.

## 2. Notice of Tenant's Right Required (Form E-O)

Any person who serves or sends a tenant a notice terminating tenancy shall simultaneously serve or send the tenant a Notice of Tenant's Rights (Form E-O).

## 3. Summary Process

No person shall commence an action for summary process against a tenant prior to issuance by the Board of a Certificate of Eviction.

## 4. Violation of Sections 1 or 2

Where the landlord fails to comply with any provisions of Sections 1 or 2, the Board shall deny the Application for Certificate of Eviction unless the Board determines:

- a. That such failure to comply is not wilful; and
- b. That denial of the Application for Certificate of Eviction would result in substantial hardship to the landlord.

Denial of an Application for Certificate of Eviction under this section shall be without prejudice to the filing of a new application. Wilful violation of any provisions of Sections 1 or 2 shall be punished as provided in Section 14 of Chapter 34 of the Ordinances of 1984, hereinafter referred to as "the Ordinance."

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5. Application for Certificate of Eviction (Form E-1)

A landlord seeking to recover possession of a housing accommodation shall complete an Application for Certificate of Eviction (Form E-1) in triplicate. One copy of the application shall be sent by certified mail, return receipt requested, to the tenant, together with Tenant's Opposing Statement (Form E-2); one copy shall be sent to the Board for filing with any additional material required under Section 7; and one copy shall be retained by the landlord. Service on the tenant by constable or sheriff or such other service as is legally acceptable may be used as a substitute for mailing to the tenant.

6. Contents of Application for Certificate of Eviction

The application shall indicate whether the apartment is leased or the rent is supplemented by a government agency or whether the apartment is financed by the federal government under Section 202, 221(d)3, or 236 of the National Housing Act, as amended; shall state the ground on which the landlord seeks to recover possession in accordance with Section 9(a) of the Ordinance; shall describe in detail the facts and circumstances concerning the alleged ground; shall state the date notice terminating tenancy was sent or served; shall state that a copy of the Notice of Tenant's Rights (Form E-0) was sent or served with the notice terminating tenancy; shall state whether there are any uncorrected substantial code violations of record for the apartment or the common areas of the building; shall state that a copy of the application has been sent or served on the tenant and shall be signed by the landlord or his authorized agent under the pains and penalties of perjury.



The application shall include the following, if the alleged ground under the Ordinance is:

- (1) Section 9(a)(i), a statement of the amount of the monthly rental; months for which rent is due; and total amount of arrearage claimed.
- (2) Section 9(a)(ii), a precise statement of the obligation or covenant of the tenancy that the tenant has violated; a statement of the date(s) of violation(s); and the date the landlord notified the tenant in writing of the violation(s).
- (3) Section 9(a)(iii), a precise statement of the nuisance, damage or interference with the comfort, safety or enjoyment of the landlord or other occupants; a precise statement of how substantial the interference is.
- (4) Section 9 (a)(iv), a statement of the charge on which the tenant was convicted; the court in which the charges were brought; and the date of conviction.
- (5) Section 9(a) (v), a copy or a precise statement of the written request or demand by the landlord; the date of such request or demand; a copy of the expiring lease or rental agreement or a precise statement of the terms thereof; and a copy of the proposed extension or renewal or a precise statement of the terms thereof.





- (6) Section 9 (a)(vi), a statement of the purpose for which the landlord sought access to the housing accommodation, and a precise statement of the manner in which the tenant refused such access.
- (7) Section 9 (a)(vii), a statement of the tenant's name, the subtenant's name; the approximate date that the subtenant moved in; and a copy of the expiring lease or rental agreement or a precise statement of the terms thereof.
- (8) Section 9 (a)(viii), a statement of the precise relationship to the landlord of the person for whom the landlord seeks to recover possession and the reasons that the apartment is needed.
- (9) Section 9 (a)(ix), a statement of the approximate date and reason for demolition of the housing accommodation and a statement of the government order to demolish.
- (10) Section 9(a)(x), a statement of the name of the person(s) who seeks to occupy the unit and a completed Form (E-1B).
- (11) Section 9 (a)(xi), a specific statement of the facts and circumstances constituting just cause for the recovery of possession. Other just cause shall include, without limitation, any of the following:

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- a. The tenant has repeatedly paid the rent late after receiving a prior late payment notice from the landlord, except where such late payment is caused by a delay in a regular governmental income assistance payment; or
- b. The tenant, after proper legal notice, has failed to pay a valid rent increase.

#### 7. Docketing of Applications for Certificate of Eviction

Applications for Certificate of Eviction shall be stamp-dated and numbered as received and docketed. Applications shall be processed in the order received. However, an application may be advanced for good cause and such good cause shall be stated in the record.

#### 8. Applications that are Illegible, Incomprehensible, Substantially Incomplete or Improperly Filed; Amendment of Application.

If the Application for Certificate of Eviction is illegible, incomprehensible, substantially incomplete or improperly filed, the Administrator shall deny such application without prejudice and notify the landlord and the tenant of the reason for such denial. Once filed, an application may not be altered by amendment. All applications must be typewritten or handwritten in ink.



#### 9.. Tenant's Opposing Statement (Form E-2)

To oppose an Application for Certificate of Eviction, a tenant may complete and file with the Board a Tenant's Opposing Statement (Form E-2). A tenant's Opposing Statement may be filed at any time prior to the hearing. The tenant may set forth in such Statement any and all evidence in opposition to the issuance of a Certificate of Eviction.

#### 10. Hearings

Upon receipt of an Application for Certificate of Eviction a hearing shall be scheduled. No Certificate of Eviction shall be determined by the Board until a hearing has been held upon such Application.

#### 11. Scheduling of Hearings; Notice; Evidence

Hearings shall be scheduled within seven (7) days and shall be held within twenty (20) days after receipt of an Application for Certificate of Eviction. A copy of the Tenant's Opposing Statement (Form E-2), as filed, shall be sent to the landlord. Notice of the time and place of the hearing shall be sent to the landlord and to the tenant. Such notice shall require both landlord and tenant to produce at the hearing all evidence relevant to the proceedings.



The landlord shall be required to produce the following evidence at the hearing if the alleged ground for eviction is:

- (1) Section 9(a)(i), a copy of the lease or rental agreement currently in force, if any; a statement of the amount of the monthly rental; amounts actually received by the landlord during the month in which the Application is filed and during the two preceding months; months for which the landlord claims rent is due; and total amount of arrearage claimed.
- (2) Section 9(a)(ii), a copy of the lease or rental agreement signed by the tenant; a precise statement of the obligation or covenant of the tenancy that the tenant has violated; a description of the manner in which the tenant has violated the obligation or covenant; a statement of the date(s) of violation(s); and a copy of the notice from the landlord notifying the tenant in writing of the violation(s) and giving the tenant a reasonable time to cure such violation(s)).
- (3) Section 9 (a)(iii), a precise description of the nuisance, damage, or interference, as the case may be, accompanied by any supporting affidavits, letters, photographs or other evidence on which the landlord intends to rely; and in the case of interference with the comfort, safety or enjoyment of the landlord or other occupants, a precise statement of how substantial the interference is, accompanied by supporting affidavits or testimony from any affected occupants.





- (4) Section 9 (a)(iv), a statement of the charge on which the tenant was convicted; the court in which the charges were brought, the date of conviction; and a certified copy of the court record of the proceedings.
- (5) Section 9 (a)(v), a copy of the written request or demand by the landlord; the date of such request or demand; a copy of the expiring lease or rental agreement and a copy of the proposed extension or renewal thereof.
- (6) Section 9 (a)(vi), a statement of the purpose for which the landlord sought access to the housing accommodation; the time (s) of day and date(s) on which the landlord sought access; whether and what kind of advance notice was given to the tenant; and the manner in which the tenant refused such access.
- (7) Section 9 (a)(vii) a statement of the tenant's name, the subtenant's name; the approximate date that the subtenant moved in; whether any rents have been received from the subtenant and a copy of the expiring lease or rental agreement signed by the tenant.



- (8) Section 9 (a)(viii), a statement of whether other suitable vacant accommodations exist in the building; a statement as to why that particular housing accommodation was selected; proof of the relationship to the landlord of the person for whom the landlord seeks to recover possession; a statement describing where that person currently lives; his reasons for moving; when he intends to occupy the accommodation; and the length of occupancy intended; accompanied by the testimony of that person or a supporting affidavit if that person is unavailable for good cause.
- (9) Section 9(a)(ix), a statement of the approximate date and reason for demolition of the housing accommodation accompanied by any supporting evidence; including a copy of the lawful government order to demolish, permits, plans, contracts, arrangements for relocation of tenants, etc.; on which the landlord intends to rely; and, a statement of reasons why the landlords purpose in recovering possession does not conflict with the provisions and purposes of the Ordinance.
- (10) Section 9(a)(x), all evidence as required pursuant to the Condominium/Cooperative Eviction Regulations.
- (11) Section 9(a)(xi), a specific statement of the facts and circumstances constituting just cause for recovery of possession accompanied by any supporting affidavits, or other evidence on which the landlord intends to rely, and a statement of the reasons why the landlord's purpose in recovering possession does not conflict with the provisions of the Ordinance.



- a. Where the ground for eviction is late payment, the evidence shall include copies of late payments, or 14-day notices sent by the landlord to the tenant, and other supporting evidence such as bookkeeping records and rent receipts.
- b. Where the ground for eviction is failure to pay a valid rent increase, the evidence shall include a copy of the valid rent increase and a copy of the notice from the landlord to the tenant implementing such notice.

If the landlord fails to produce any of the evidence required under this section and the Board finds that such failure was not wilful, the Board may grant the Certificate of Eviction, provided that the landlord has substantially complied with this Section and has proven a prima facie case. Nothing in this Section shall be deemed to prohibit the Board from seeking additional evidence.

## 12. Continuances: Failure to Appear at Hearing

Hearings may be continued by consent of all parties. In the absence of consent, the Administrator shall continue a hearing for good cause, and such good cause shall be stated in the record. The Administrator may decline to continue a hearing where the request is made less than seventy-two (72) hours prior to the hearing or where the party requesting the continuance has previously been granted a continuance in the same case. If the tenant fails to appear at a scheduled hearing.



14. Disqualification of Hearing Officer having personal interest or bias in a pending Application

- a. No Hearing Officer shall take any part in hearing, reviewing or deciding an Application for Certificate of Eviction in which he has a personal interest in the outcome, other than being a landlord or tenant himself, or has a bias in favor or against any party involved. A Hearing Officer may disqualify himself at any time.
- b. Any party may request the Administrator to disqualify a Hearing Officer by filing a written request with the Administrator at least forty-eight hours before the hearing. Any such request shall be considered at the time of the hearing by the Administrator and shall be determined as part of the record.

15. Record

The Application for Certificate of Eviction, the Tenant's Opposing Statement, the Notice of Hearing, the Hearing Record Sheet, the transcript, if any, documentary evidence or exhibits introduced at the hearing, the Certificate of Eviction or Notice of Denial and any Statement of Reasons shall constitute the official record of the hearing. The Hearing Officer shall make available a copy of the official record on the written request of a party, but may require the party to pay reasonable costs of any transcript before making it available to the party.





a. General Rule. If the Board finds that the facts attested to in the Application for Certificate of Eviction are valid and in compliance with the provisions of the Ordinance and this regulation, the Certificate of Eviction shall be issued.

b. Exceptions: Nonpayment of Rent Cases:

(i) Payment or Tender of Rentals

Where the Application for Certificate of Eviction is based solely on the ground that the tenant has failed to pay the rent to which the landlord is entitled, and the Board finds that the tenant has paid or tendered payment of all rent due prior to the hearing, the Board shall deny the Application for Certificate of Eviction.

(ii) Old Rent Claims

If the Board finds that the tenant has paid the rent to which the landlord is entitled for the month in which the Application is filed and for the three (3) months preceding the filing of the Application for Certificate of Eviction and that any failure to pay the rent to which the landlord is entitled is for a prior period, the Board shall deny the Application for Certificate of Eviction, leaving the landlord the remedies otherwise provided by law for the recovery of rent.



(iii) Repairs by Tenant; Deduction from Rent Due:

If the Board finds that the tenant has made repairs to correct violations of the standards of fitness for human habitation as established in Article II of the State Sanitary Code or other applicable laws and further finds that the tenant has complied with the requirements and provisions of G.L. Chapter 111, section 127L, "the Right to Repair Law," the Board shall deduct from the rent claimed to be due the cost of such repairs not exceeding an amount equal to four months' rent.

d. Exceptions; Retaliatory Eviction; Reprisals:

It shall be a defense to an Application for Certificate of Eviction that such application was in reprisal for the act of the tenant for reporting a violation or suspected violation of, or for filing a complaint under any health or building code or any rent control or other ordinance or state law or regulation governing residential premises, or for organizing or joining a tenant's union or similar organization. The receipt of an Application for Certificate of Eviction within six (6) months after making a report of any such violation or suspected violation or filing any such complaint shall create a rebuttable presumption, that such application is a reprisal against a tenant for making such report or filing such complaint.



Where the landlord appears and the tenant fails to appear at a scheduled hearing, the landlord shall present a prima facie case in support of his Application. If the landlord makes the prima facie case, the application shall be placed on a default list for action by the Board, whereas the Board shall grant the Application for Certificate of Eviction by default. No Application for Certificate of Eviction shall be granted where the application fails to comply with Sections 6 and 7.

18. Certificate of Eviction (Form E-6); Default Certificate (Form E-4, E-4A)

Certificates of Eviction shall certify that the tenant was notified of the Application for Certificate of Eviction and was given an opportunity to be heard; shall state that the Certificate authorizes the landlord to commence court proceedings to recover possession within forty-five (45) calendar days of the date of the decision; shall state that the issuance of the certificate does not require the tenant to move; and shall state that the decision of the Board may be appealed to the District Court in the jurisdiction in which the housing accommodation is located or to the Housing Court of the City of Boston within thirty (30) calendar days of the date of the decision. Certificates of Eviction and Certificates of Eviction by Default shall certify that the facts attested to in the landlord's application are valid and in compliance with the law; and shall state the grounds that exist for the landlord to seek to recover possession.



19. Issuance of Certificate; Notice of Issuance or Denial

On a decision by the Board to grant an Application for Certificate of Eviction, the Board shall issue a Certificate of Eviction to the landlord as of the date of the decision and shall send notice thereof to the tenant, which notice shall state the date of issuance of the certificate and the grounds on which the certificate is issued; shall state that the issuance of the certificate does not require the tenant to move; and shall state that the decision of the Board may be appealed to the District Court in the jurisdiction in which the housing accommodation is located or to the Housing Court of the City of Boston within thirty (30) calendar days of the date of the decision. On a decision by the Board to deny an Application for Certificate of Eviction, notice thereof shall be sent to both parties which notice shall state the date of denial; the grounds for denial; and shall state that the decision may be appealed to the District Court in the jurisdiction in which the housing accommodation is located or to the Housing Court of the City of Boston within thirty (30) calendar days of the date of decision.

20. Reconsideration

Within seven (7) calendar days after a decision by the Board to grant or deny a Certificate of Eviction, the aggrieved party may submit a written request for reconsideration. Such request shall set forth as grounds for reconsideration one or more of the following:

a. That compelling evidence exists, not previously presented, on which the decision should be reversed or modified, and stating such evidence; or





- b. That compelling legal reasons exist, not previously presented, on which the decision should be reversed or modified, and stating such reasons; or
- c. That the decision was obtained through fraud, perjury, misrepresentation, harassment or intimidation, and stating the particulars; or
- d. That the decision was by default, that the losing party has a good cause but had no notice of the proceedings or otherwise was unable to present the case for compelling reasons and stating the cause and the reasons.

On receipt of the request for reconsideration, the Board shall decide whether to grant or deny reconsideration. If the Board decides to grant reconsideration, a new hearing of the case shall be scheduled to be held within ten (10) calendar days of such decision and both parties shall be notified that reconsideration has been granted and of the time, place and purpose of the hearing. Where the Board's decision has been appealed or where summary process proceedings have begun, the Board may intervene in the court proceedings and request that the court remand or stay further proceedings pending reconsideration by the Board. Decisions by the Board to grant or deny a Certificate of Eviction on reconsideration shall be made within seven (7) calendar days of the hearing. Requests for reconsideration shall not toll the running of the 30 calendar day judicial appeal period or, where applicable, the 45 calendar day period for commencement of a summary process action.

21. Statement of Reasons

Any party may, within seven (7) calendar days after a decision by the Board to grant or deny a Certificate of Eviction, request in writing that the Board issue a Statement of Reasons for the decision.

22. Appeals

Upon a decision by the Board granting or denying a Certificate of Eviction, either party may, within thirty (30) calendar days of the decision, appeal the decision to the District Court in the jurisdiction in which the housing accommodation is located or to the Housing Court of the City of Boston.

23. Recovery of Possession by Coercive or Forcible Conduct

It shall be unlawful for any person, directly or indirectly, to seek possession of a controlled rental unit by coercive or forcible conduct, unless such conduct is otherwise authorized by law. "Coercive or Forcible conduct" includes but is not limited to:

a. Forcibly removing a tenant or the possessions of a tenant

from a controlled housing accommodation or preventing lawful access to a controlled housing accommodation; or

b. Interrupting heat, utilities or any other housing services or threatening to do any of the foregoing; or

c. Any pattern of conduct that deprives the tenant of the peace, comfort or enjoyment of the controlled housing accommodation which amounts to tenant intimidation or harassment. Any person who seeks to recover possession by coercive or forcible conduct without a Certificate of Eviction shall be deemed to have violated Section 14 of the Ordinance.

#### 24. Effective Date

These regulations shall become effective on December 13, 1984, and all Applications for Certificate of Eviction pending before the Board on that date shall be considered and decided in conformance with these regulations.

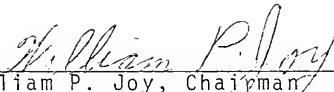
#### 25. Judicial Construction


The provisions of this regulation are severable, and if any provisions shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not effect or impair any of the remaining provisions.

Voted this 13th day of December, 1984

Passed: Yeas 4

Nays 0

  
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William P. Joy, Chairman

  
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Maurice Frye

  
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Tina Leardi

  
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Doris Thompson



